IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 796 of 1998
with
civil application No. 1569 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ARUNKUMAR PURUSHOTTAMBAHI CHAUHAN

Versus

UNITY PRINTERS THRO' PARTNERS MADHUBHAI CHHOTABHAI PATEL & 1

Appearance:
MR JITENDRA MALKAN for Petitioner
Mr.K.N.Raval, senior advocate withMr. B.H.Chhatrapati for the respondents.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

Date of decision: 06/04/98

ORAL JUDGEMENT Per Bhatt,J

Admit,notice of which is waived by learned counsel Mr. K.N.Raval for the respondents.Upon joint request, the matter is taken up today for final hearing.

By this appeal, the appellant-original defendant in Special civil suit No. 242 of 1985 has questioned the legality and validity of the judgment and decree recorded by the learned 4th Joint Civil Judge (S.D.) Vadodara on 31.12.1997 whereby the respondent-plaintiff came to be awarded a decree for possession in respect of Industrial Shed No.6 ('I.S.') from the appellant-defendant and to get damages or compensation of Rs. 4,000/- per month since 6.8.1982 by way of mesne profit on the ground that the appellant-defendant occupied two sheds at a time since then, by invoking aids of provisions of Section 96 of the Code of Civil Procedure, 1908 ('the Code).

For the sake of convenience and brevity, the parties are addressed to as they were arraigned in the trial court.

The plaintiff is a partnership firm dealing with construction of industrial sheds at Vadodara at the relevant time. The defendant was an automobile engineer doing business in the name of Calcutta Diesel. There was an agreement to sell ,ex 51 dated 6.8.1977 in respect of I.S. No.12 for a consideration of Rs. 1,25,000/- out of 12 proposed I.S. in United Estate at Kareli Baug, Vadodara, admeasuring about 1250 sq.ft. (6' X 25').The amount of Rs.1,20,000/- out of total consideration of Rs.1,25,000/- came to be paid and remaining amount of Rs.5,000/- was agreed to be paid upon completion of construction of I.S.No.12, as there was likelihood of some delay in completion. In the meantime, it appears, since out of 12 I.S., 6 I.S. had been constructed and sanction of remaining 6 I.S. had been sought, it was agreed by both the parties that I.S .No.6 temporarily should be allowed to be used by the defendant till construction of I.S.No.12 is completed. The plaintiff inter alia contended that out of 12 such sheds, the municipal corporation did not accord sanction for only one plot like that I.S.No.12. It was in that context that it was pleaded that since I.S.No.12 could not be constructed beyond the power of the plaintiff firm, the agreement to sell in respect I.S.No.12 came to be frustrated. In the meantime, the defendant was alleged to have forcibly taken after transfer of I.S.No.11/12 on 6.11.1982. Since the defendant was in possession of I.S.No.6 and forcible possession of I.S.No. 11- 12,the plaintiff filed the aforesaid suit and inter alia sought for relief that on account of doctrine of frustration, it was not possible to implement the agreement to sell in respect ofI.S.No.12 and,therefore, agreement to sell had become unenforceable and as a result of which, the plaintiff is entitled to possession of sheds and mesne profits for use of two sheds viz. I.S Nos. 6 and 11.

The defendant appeared and resisted the suit by filing written statement at ex. 9 denying the allegations and submissions raised in the plaint and inter alia contending that transfer of I.S.No.11 was not taken forcibly on 6.11.1982 and the plaintiff is not entitled to mesne profits or any relief and there was no frustration of contract. Thus,the suit came to be countenanced.

The trial court on the basis of pleadings between the parties and facts and circumstances emerging from the record of the case raised issues at ex. 21. The plaintiff relied on the evidence of one P.M.Patel ,partner of plaintiff firm at ex.29 and one witness who acted as an arbitrator viz. A.M.Mehta at ex.93. The defendant relied only on his evidence at ex. 50.

The trial court upon examination, analysis and appraisal of the evidence- documentary as well as viva voce, decreed the suit as stated hereinabove and held that (i) the plaintiff is entitled to recover actual physical possession of I.S. No.6 from the defendant and (ii) that the plaintiff is also entitled and the defendant is liable to pay an amount of Rs.4,000/- per month by way of damages on account of use and occupation of I.S.No.6. Hence,this appeal at the instance of the defendant.

In the course of submissions before, the advocate appearing for the appellant-defendant has placed copies of pleadings, viva voce evidence and entire documentary evidence.

After having considered the submissions of both the learned advocates and after having dispassionately examined the pleadings, evidence- both documentary as well as oral- we are of the opinion that no case is made out for interference except a direction in relation to simultaneous execution of the sale deed upon handing over of possession and payment of damages awarded by the trial court since the entire controversy has generated within the equitable jurisdiction and it is the fundamental principle of equity that court can mould the relief depending upon the facts and circumstances of the case so as to effectively and efficiently adjudicate upon the controversy between the parties and with a view to seeing that no inequity is done to either of the parties and equity is done to both, more so in a case when the controversy arising out of equitable relief has the basis of agreement to sell which is more than two decades old.

Ex.51 is the agreement to sell dated 6.8.1977. I.S.No.6 is ordered to be returned to the plaintiff along with payment of amount of damages or compensation of Rs. 4,000/- per month since 6.8.1982 from the defendant as he occupied I.S.No. 12- 11 and 6 at a time since that date. Bearing in mind clause No.7 in the agreement to sell ex.51, coupled with the peculiar facts and special circumstances, since the court has given direction for actual physical possession to be handed over by the defendant to the plaintiff insofar as I.S. No.6 is concerned and when the direction of payment of amount of damages or mesne profits at Rs. 4,000/- per month since 6.8.1982 from the defendant as he was occupying both the sheds without indicating as to whether it would be on execution of the sale deed by the plaintiff in favour of the defendant in relation to I.S.No.11 as one I.S. viz. I.S.No.12 could not been constructed and principle of frustration of contract has not been accepted and followed. Since,in our opinion, the trial court has taken correct ultimate decision, we obviously,therefore, have to affirm and confirm the said conclusion with one modification and direction that plaintiff should also execute the sale deed simultaneously upon getting possession of I.S.No.6 and damages as provided and it will be a complete justice between the parties and it will be absolutely equitable in the facts and circumstances of the case.

Since this court broadly agrees with the ultimate conclusion recorded by the trial court in passing the directions in the impugned decree and most of the reasons assigned in making such directions, we do not deem it expedient to meticulously and minutely reiterate the same reasons and it is settled proposition of law that when appellate court broadly agrees with the views and conclusion of the trial court ,it would not be necessary to repeat and reiterate the same reasons and grounds upon which the conclusions are recorded (see Girjanandini vs. Brijendranarain,AIR 1967,SC 1124) We are satisfied that the impugned decree is justified except in addition to the same, aforesaid direction for execution of the sale deed in respect of I.S.No. 11 for doing complete equity is imperative.

In the end, we fully confirm and affirm the judgment and decree of the trial court with a further direction to the respondent-plaintiff to execute the sale deed in respect of I.S.No.11 simultaneously upon getting possession of I.S.No. 6 and the amount of damages awarded by the trial court so as to do complete equity and justice and resolving the dispute which has passed through long legal

conduit pipe for more than two decades.

The appellant -defendant is directed to hand over possession of I.S.No.6 on or before 30th June 1998 and also to deposit the amount of arrears of compensation or mesne profits before the trial court on or before the said date. The respondent-plaintiff is directed to execute sale deed within a period of fifteen days from the date of deposit of the amount and handing over of possession and the amount of compensation shall be allowed to be withdrawn by the trial court only after execution of the sale deed.

At this stage, Mr. Malkan for the appellant requested for time upto June 30,1998. At the same time, Mr. Raval for the respondent submitted that in order to cut short future complications and further litigation, on default on the part of the appellant , the impugned decree should be restored. Even at the cost of repetition, since we are dealing with equitable jurisdiction and the ultimate anxiety of the court is to see that complete justice is done between the parties,we direct both the parties to file undertaking within a period of two weeks from today before this court that the aforesaid directions shall be scrupulously followed and extension of one month is granted. In case of failure of undertaking, it will be open for the parties to move the court for appropriate remedy for breach of undertaking.It will be open for the parties to execute the decree and to move the court for appropriate orders.

In the result, the appeal is partly allowed to the extent of the aforesaid directions and rest of the directions contained in the impugned decree are confirmed and affirmed. In the peculiar facts of this case, parties are directed to bear their own costs. No orders on civil application.
